IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.09.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
&
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

TAX CASE (REVISION) PETITION NO.1180 OF 1992

The State of Tamil Nadu
rep.by the Deputy Commissioner
of Commercial Taxes Madras
(Central) Division, Madras - 6 ..Petitioner

Vs.

Nu-Tread Tyres
45, Whites Road
Madras - 14 ..Respondent

Prayer: Petition to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Madras dated 13.11.1990 and passed in T.A.No.1180/1989 against the order of the Appellate Assistant Commissioner (CT) IV, 6th Floor Kuralagam Annexe Madras-108, dated 6.7.89 and made in Appeal No.C.ST. No.96/88, against the order of the Commercial Tax Officer, Anna Salai-II, Assessment Circle 31, Wallers Road, Madras -2, dated 25.2.88 and made in CST/31991/86-87.

For Appellant : Mr.Haja Naziruddin, Spl.G.P (Taxes)
For Respondent : Mr.K.J.Chandran

ORDER

(Order of the court was delivered by
Justice R.Balasubramanian)

Revenue is before this court challenging the order dated 13.11.1990 passed by the Tamil Nadu Sales Tax Appellate Tribunal setting aside the order of the Assessing Officer levying penalty. When the tax case was pending before this court, a question arose as to whether existence of "mens rea" before levying penalty must be established or not. Since there appeared to be conflicting views, that issue alone was referred for a decision by a larger Bench and accordingly, the larger Bench, headed by the Hon'ble The Chief Justice, by judgment dated 27.07.2006 held that existence of "mens rea" is necessary. That is how the tax case is before us once again. Heard Mr.Haja Naziruddin learned counsel appearing for the petitioner and Mr.K.J.Chandran learned counsel appearing for the assessee.

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2. Admittedly, "boiler" was purchased by the assessee. It is not specifically shown in the application submitted by the assessee

for registration under the Central Sales Tax Act. Consequently, in the registration certificate also, there is no entry regarding "boiler". Learned counsel for the Revenue would contend that the assessee had deliberately failed to include "boiler" as one of the components of his business in the application submitted by him for registration and there is an element of bad faith and mala fides on his part when he claimed concessional rate of tax by submitting "C" Form regarding the purchase of "boiler". Learned counsel for the assessee is not disputing the fact that "boiler" was purchased; on such purchase, concessional rate of tax had been paid by filing "C" Forms; "boiler" is not specifically shown in the application for registration filed and it is equally not shown in the Certificate of Registration as well. But however, drawing our attention to column No.16 in the application; the relevant entry in the Certificate of Registration and also relying upon a judgment of this court in the case reported in 21 STC 480 (Ben Gorm Nilgiri Plantations Co. Vs. Government of Madras), learned counsel for the assessee would contend that the order challenged in this tax case, holding that no ground is made out for levying penalty, can be easily sustained. We extract hereunder column No.16 found in the application filed by the assessee for registration:

"16. The following goods or classes of goods are purchased by the dealer in the course of inter-state trade or commerce for sale or for use in the execution of contracts:

(a) Resale (b) Use in the manufacture or processing of goods for sale. TREAD RUBBER, COAL, VALCANIZING SOLUTION & PETROL, ETC.

(c) Use in Mining (d) Use in the generating or distribution of electricity or any other form of power.

(e) Use in the packing of goods for sale/resale.

We also extract hereunder the relevant entry in the Certificate of Registration given to the assessee:

(a) Resale	(b) Use in the manufacture or processing of goods for sale.	(c) For use in mining
NIL	(1) TREAD RUBBER, COAL, VALCANIZING SOLUTION AND PETROL, ETC.	

Similar is the issue raised and decided by this court in 21 STC 480 referred to supra and the Hon'ble Judges constituting the Division Bench held as hereunder:

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"The phrase "falsely represents" in section 10(b) of the Central Sales Tax Act, 1956, clearly indicates that the

falsity of the representation should be with the knowledge of the representator. If he is under an honest belief that what he represents is true, he cannot be said to make a false representation. The gravamen of the offence is the representation of something as true which, in fact and to the knowledge of the representator, is false. It cannot be said that the offence is an absolute one in the sense that it is not conditional on the presence of mens rea.

Section 10(b) is a penal provision and where a question arises whether an offence has been committed or not, the dealer who is accused of the offence is entitled to the benefit of the doubt.

In the application for registration made by the assessee, a dealer registered under the Central Sales Tax Act, 1956, the assessee wanted a certificate in respect of the goods for the use in the manufacture, tea-chests for packing purposes, machinery, drugs, etc., for running the estate and manufacturing tea. In the certificate of registration issued on this application against the column "for use in manufacture", "tea-chests, machinery, drugs, etc." were mentioned. The "C" Form issued by the assessee included blankets, paints, tiles, clocks and brushes. The question was whether the assessee had made false representation in the declarations in Form "C" issued by him and was therefore liable to penalty under section 10(b) of the Act. The assessee contended that he was under the bona fide belief that the word "etc." in the certificate of registration would cover those articles:

Held, that the assessee could possibly have formed the belief, and quite honestly, that the word "etc." would cover those articles and therefore it could not be said that the assessee, with the full knowledge of the falsity of the representation, made the declaration in the "C" Form issued by him and he was not liable to the penalty under section 10(b)."

3. In our considered opinion, this judgment squarely applies to the case on hand. The finding by the Tribunal is that, the assessee had acted bona fide in purchasing the boiler and using "C" Form, claimed concessional rate of tax. The finding is also that, the boiler so purchased is connected with the business which the assessee carries on. We do find that there is no "mens rea" at all

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on the part of the assessee to cheat the Revenue. Accordingly, going by the law laid down by this court in the case referred to above, we find that there is no illegality in the judgment under challenge and it is sustained. Consequently, the tax case stands dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Vsl

To

1.The Dy. Commr. of Commercial Taxes, Madras (Central) Dn., Madras - 6
2.The T.N. Sales Tax Appellate Tribunal (Addl.Bench), Madras - 104
3.The Appellate Asst.Commr.(CT) IV Station, 6th Floor, Kuralagam Annexe,Madras - 108
4.The Commercial Tax Officer, Anna Salai - II, Assessment Circle

+1cc to Spl. Govt. Pleader Sr 43833

PV (CO)
km/10.10.

T.C. (R) NO.1180 of 1992

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